

Appeal from decision of Oregon State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. OR MC 28016 through OR MC 28019.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file with BLM a notice of intention to hold the claim or evidence of performance of assessment work on the claim by Oct. 22, 1979. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: Henry G. Zacher, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

By decision of May 23, 1983, the Oregon State Office, Bureau of Land Management (BLM), declared the unpatented Cathy Ann, Miss Fortune, John Henry, and Shirley Gail lode mining claims, OR MC 28016 through OR MC 28019, abandoned and void because no proof of labor or notice of intention to hold the claims had been filed with BLM prior to October 22, 1979, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

The claims were located between 1964 and 1968 in sec. 18, T. 28 N., R. 11 E., Willamette meridian, Snohomish County, Washington, within the Snoqualmie National Forest.

Appellant states that he sent a proof of labor to BLM in 1979. The letter of transmittal, which accompanied the copies of the notices of location, makes no mention of any proof of labor being enclosed.

BLM states that it has no record of receiving any proof of labor for these claims on or before October 22, 1979. Copies of the 1979 proofs of labor for these claims were received by BLM on December 5, 1980.

[1] Section 314 of FLPMA requires the owner of an unpatented mining claim located before October 21, 1976, on Federal land to file with the proper office of BLM on or before October 22, 1979, a copy of the notice of location for the claim and evidence of assessment work performed on the claim or a notice of intention to hold the claim, and thereafter before December 31 of every year to file both in the county recording office and with BLM evidence of assessment work performed that year or a notice of intention to hold the claim. The statute also provides that failure to file such instruments within the prescribed time periods shall be deemed conclusively to constitute an abandonment of the claim. The responsibility for complying with the recordation requirements of FLPMA rests with the owner of the unpatented mining claim. As no proof of labor or notice of intention to hold the claims for 1979 was timely filed with BLM on or before October 22, 1979, BLM properly deemed the claims to be abandoned. J & B Mining Co., 65 IBLA 335 (1981); Margaret E. Peterson, 55 IBLA 136 (1981). This Board has no authority to excuse lack of compliance, or to extend the time for compliance, or to afford any relief from the statutory consequences, no matter how meritorious the appeal. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

[2] The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 76-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest

the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Lynn Keith, supra at 196, 88 I.D. at 371-72.

The regulations define "file" to mean "being received and date stamped by the proper BLM Office. 43 CFR 1821.2-2(f); 43 CFR 3833.1-2(a). Filing is accomplished only when a document is delivered to and received by the proper BLM office. The filing requirement is imposed by statute, and this Board has no authority to waive it. Lynn Keith, supra.

BLM stated that it did not receive any proof of labor in 1979. Appellant states only that he mailed the proof of labor to BLM that year. As no timely receipt of the proof of labor has been shown, it must be found that BLM was not acting improperly in its decision declaring the claims abandoned and void, under the terms of FLPMA.

Appellant may wish to consult with BLM about the possibility of relocating these claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Gail M. Frazier
Administrative Judge

